

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GREENWICH TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-20

GREENWICH TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Greenwich Township Education Association against the Greenwich Township Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement by refusing to collect representation fees from an employee the Board is seeking to have clarified out of the negotiations unit of support staff represented by the Association. Until the secretary is properly removed from the unit, the Association recognizes a duty to represent her fairly and has a concomitant right to seek enforcement of an alleged contractual requirement that she contribute her fair share towards that representation.

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A., attorneys
(Alan R. Schmoll, of counsel; Robert A. Muccilli, on the
brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On August 20, 1991, the Greenwich Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Greenwich Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by refusing to collect representation fees from an employee the Board is seeking to have clarified out of the negotiations unit of support staff represented by the Association.

The parties have filed briefs, an affidavit and documents. These facts appear.

The parties entered into a collective negotiations agreement effective July 1, 1989 to June 30, 1992. The agreement's recognition clause has been in existence for approximately ten years. Pursuant to it, the Association represents the Board's support staff including secretarial/clerical personnel but excluding confidential employees. The agreement's grievance procedure ends with binding arbitration of contractual grievances.

On November 13, 1990, the Board petitioned for a clarification of unit (CU-91-22). The Board seeks a determination that the secretaries to the business administrator and board secretary are confidential employees within the meaning of N.J.S.A. 34:13A-3(g). On April 22, 1991, the Association filed a grievance claiming that the Board had violated the parties' agreement by failing to collect a representation fee in lieu of dues from a secretary who is a subject of the CU petition. The business administrator denied the grievance, asserting that the employee is confidential and did not have to pay the fee until a decision on the CU petition is rendered. The Association demanded binding arbitration. This petition ensued.

The Board argues that a resolution of the arbitration depends on a determination of the employee's confidential status and that we have sole jurisdiction over such a determination. The Association notes that we have not yet determined whether this employee is confidential. It argues that the mere filing of a CU petition does not relieve the majority representative of its

obligation to represent the interests of an employee whose status is in dispute; nor does it relieve the employer of its obligation to collect representation fees from non-members if the contract so provides.

N.J.S.A. 34:13A-5.3 provides, in part:

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

This statute allows a public employer and a majority representative to define the collective negotiations unit and to determine which employees are within that definition. However, if an agreement cannot be reached on unit definition and employment placement, then the Commission may make these determinations. See State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 242 (1974); West Orange Bd. of Ed. v. Wilton, 57 N.J. 404, 422 (1971); Elizabeth Fire Officers Ass'n. v. City of Elizabeth, 114 N.J. Super. 33, 37 (App. Div. 1971); see also N.J.S.A. 34:13A-6(d). As the Supreme Court noted in State v. Prof. Ass'n, empowering a board or officer to fix an appropriate unit if the parties cannot agree is a nearly universal method of settling such questions. 64 N.J. at 242; see also Wood-Ridge Bor., P.E.R.C. No. 88-68, 14 NJPER 130 (¶19051 1988).

The Board has invoked our jurisdiction to resolve the question of whether these secretaries are confidential employees and should be excluded from the Association's unit. The answer to that question does not depend on contract interpretation but involves the

application of statutory policy and standards. These are matters for decision by us rather than an arbitrator. Cf. Marion Power Shovel, 230 NLRB No. 85, 95 LRRM 1339, 1341 (1977). Contrast Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 88-110, 14 NJPER 342 (¶19130 1988) (permitting arbitration of grievance claiming social worker consultant performing unit work); Somerset Cty. College, P.E.R.C. No. 86-48, 11 NJPER 690 (¶16238 1985) (permitting arbitration of grievance claiming laboratory assistant performing unit work).

That, however, is not the question the Association seeks to arbitrate. N.J.S.A. 34:13A-5.5 authorizes the majority representative and employer to negotiate over requiring all unit employees to pay a representation fee in lieu of dues to a majority representative. N.J.S.A. 34:13A-5.6 provides for payroll deduction of such fees. The Association has grieved its claim that the parties' contract requires the Board to collect representation fees from one of the secretaries unless and until she is removed from the Association's unit. Arbitration of that claim would not require a determination that the secretary is a confidential employee within the meaning of the Act. The arbitrator would be limited to determining whether the contract provides for the collection of representation fees and whether the Board failed to collect such fees from this individual. Until the secretary is properly removed from the unit, the Association recognizes a duty to represent her

fairly, and has a concomitant right to seek enforcement of an alleged contractual requirement that she contribute her fair share towards that representation.

ORDER

The request of the Greenwich Township Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: November 25, 1991
Trenton, New Jersey
ISSUED: November 26, 1991